

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JASON LYNN HOLLADY,

Petitioner,

CRIMINAL CASE NO. 03-50046
CIVIL CASE NO. 05-40004

v.

UNITED STATES OF AMERICA,

HONORABLE PAUL V. GADOLA
U.S. DISTRICT COURT

Respondent.

**ORDER OVERRULING PETITIONER'S OBJECTIONS AND ACCEPTING THE
REPORT AND RECOMMENDATION**

Before the Court are Petitioner's motion to vacate sentence filed pursuant to 28 U.S.C. § 2255 and the Report and Recommendation of United States Magistrate Judge Steven D. Pepe. In his Report and Recommendation, the Magistrate Judge recommended that the Court deny Petitioner's motion to vacate sentence. Petitioner subsequently filed objections to the Report and Recommendation. For the reasons below, the Court overrules Petitioner's objections and accepts the Report and Recommendation as the opinion of this Court.

I. Legal Standard

The Court's standard of review for a Magistrate Judge's Report and Recommendation depends upon whether a party files objections. If a party does not object to the Report and Recommendation, the Court does not need to conduct a review by any standard. *See Lardie v. Birkett*, 221 F. Supp. 2d 806, 807 (E.D. Mich. 2002) (Gadola, J.). If a party does object to portions of the Report and Recommendation, the Court reviews those portions de novo. *Lardie*, 221 F. Supp. 2d at 807. The Federal Rules of Civil Procedure dictate this standard of review in Rule 72(b), which states, in relevant part:

The district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

Fed. R. Civ. P. 72(b)(3). Here, because Petitioner filed objections, this Court reviews de novo those portions to which an objection has been made. *See Lardie*, 221 F. Supp. 2d. at 807.

De novo review in these circumstances requires at least a review of the evidence before the Magistrate Judge; the Court may not act solely on the basis of a Magistrate Judge's Report and Recommendation. *See* 12 Wright, Miller & Marcus, Federal Practice and Procedure: Civil 2d § 3070.2 (1997); *see also Hill v. Duriron Co.*, 656 F.2d 1208, 1215 (6th Cir. 1981). The Court may supplement the record by entertaining additional evidence, but is not required to do so. 12 Wright, Federal Practice § 3070.2. After reviewing the evidence, the Court is free to accept, reject, or modify the findings or recommendations of the Magistrate Judge. *See Lardie*, 221 F. Supp. 2d at 807. If the Court accepts a Report and Recommendation, the Court is not required to state with specificity what it reviewed; it is sufficient for the Court to state that it engaged in a de novo review of the record and adopts the Report and Recommendation. *See id.*; 12 Wright, Federal Practice § 3070.2.

II. Analysis

On April 13, 2004, Petitioner pled guilty to a first superseding information charging him with willfully filing a false tax return. On September 9, 2004, Petitioner was sentenced to fifteen months of imprisonment and one year of supervised release. Petitioner has now filed a motion to vacate his sentence pursuant to 28 U.S.C. § 2255.

In his Report and Recommendation, the Magistrate Judge concluded that Petitioner's motion should be denied. After reviewing Petitioner's objections and the Report and Recommendation, the

Court finds that the conclusions of the Magistrate Judge are correct and his reasoning is sound. In particular, the Court finds that Petitioner is not entitled to resentencing under *Blakely v. Washington*, 542 U.S. 296 (2004). Further, at Petitioner's sentencing, there was no *Booker* error nor any statutory Sentencing Guidelines error in calculating the tax loss. Finally, Petitioner did not suffer from ineffective assistance of counsel.

III. Conclusion

Accordingly, after having reviewed the Magistrate Judge's Report and Recommendation, Petitioner's objections, and the applicable portions of the record, **IT IS HEREBY ORDERED** that Petitioner's objections [docket entry #39] to the Report and Recommendation are **OVERRULED**.

IT IS FURTHER ORDERED that the Report and Recommendation [docket entry #36] is **ACCEPTED and ADOPTED** as the opinion of this Court.

IT IS FURTHER ORDERED that Petitioner's motion to vacate sentence [docket entry #20] is **DENIED**.

SO ORDERED.

Dated: June 30, 2008

s/Paul V. Gadola
HONORABLE PAUL V. GADOLA
UNITED STATES DISTRICT JUDGE

Certificate of Service

I hereby certify that on June 30, 2008, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following:

Robert W. Haviland, and I
hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participants: Jason Hollady.

s/Ruth A. Brissaud
Ruth A. Brissaud, Case Manager
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